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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 HECTOR EDUARDO BRAVO
11 SOLTERO,

Plaintiff,

12 v.

13 U.S. CUSTOMS AND BORDER
14 PROTECTION,

Defendant.

CASE NO. 15cv2559 WQH (KSC)

ORDER

15 HAYES, Judge:

16 The matter before the Court is Plaintiff's Motion for Leave to Proceed In Forma
17 Pauperis. (ECF No. 2).

18 On November 13, 2015, Plaintiff, proceeding pro se, initiated this action by filing
19 a complaint. (ECF No. 1). On November 13, 2015, Plaintiff also filed the Motion to
20 Proceed in Forma Pauperis ("IFP"). (ECF No. 2).

21 **I. Motion to Proceed IFP**

22 All parties instituting a civil action, suit, or proceeding in a district court of the
23 United States, other than a petition for writ of habeas corpus, must pay a filing fee of
24 \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. An action may proceed
25 despite a party's failure to pay only if the party is granted leave to proceed in forma
26 pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177
27 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not a right." *Smart v.*
28 *Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

1 In Plaintiff's accompanying affidavit, Plaintiff states that he is self-employed and
 2 earns \$1,500 a month. Plaintiff states that his only asset is a 2011 Nissan Sentra.
 3 Plaintiff states that he has a checking account total of \$1,200 and a total debt of \$982.
 4 Plaintiff states that has four dependents who rely on him for support. After considering
 5 Plaintiff's motion and accompanying affidavit, the Court concludes that Plaintiff is
 6 entitled to proceed IFP. The Court therefore grants Plaintiff's motion to proceed IFP
 7 pursuant to 28 U.S.C. § 1951(a).

8 **II. Initial Screening of Complaint**

9 A complaint filed by any person proceeding IFP pursuant to 28 U.S.C. § 1915(a)
 10 is also subject to mandatory review and sua sponte dismissal to the extent it "is
 11 frivolous or malicious; fails to state a claim on which relief may be granted; or seeks
 12 monetary relief from a defendant who is immune from such relief." 28 U.S.C. §
 13 1915(e)(2)(B)(i)-(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en
 14 banc). The standard used to evaluate whether a complaint states a claim is a liberal one,
 15 particularly when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97,
 16 97 (1976). "[P]ro se litigants are bound by the rules of procedure." *Ghazali v. Moran*,
 17 46 F.3d 52, 54 (9th Cir. 1995). Federal Rule of Civil Procedure 8 provides that "[a]
 18 pleading that states a claim for relief must contain ... a short and plain statement of the
 19 claim showing that the pleader is entitled to relief..." Fed. R. Civ. P. 8(a).

20 In this action, the Court finds that Plaintiff's Complaint survives the sua sponte
 21 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and that Plaintiff is
 22 therefore automatically entitled to U.S. Marshal service on his behalf. *See Lopez*, 203
 23 F.3d at 1126-27; 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve
 24 all process, and perform all duties in [IFP] cases."); Fed. R. Civ. P. 4(c)(2) (providing
 25 that "service be effected by a United States marshal, deputy United States marshal, or
 26 other officer specially appointed by the court . . . when the plaintiff is authorized to
 27 proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915."). Plaintiffs are advised that
 28 this Order will not be construed as a denial of a 12(b)(6) motion to dismiss or

1 expressing an opinion as to whether the Complaint would survive such a motion. *See*
2 *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007) (“[T]he sua sponte
3 screening and dismissal procedure is cumulative of, and not a substitute for, any
4 subsequent Rule 12(b)(6) motion that the defendant may choose to bring.”).

5 **III. Conclusion**

6 IT IS HEREBY ORDERED that the motion to proceed IFP (ECF No. 2) is
7 granted. The Clerk of Court shall issue a summons and provide Plaintiff with the
8 summons, certified copies of both this Order and the Complaint, and a blank U.S.
9 Marshal Form 285. Plaintiff shall complete the U.S. Marshal Form 285, and forward
10 the Form 285 and the designated copies of this Order and the Complaint to the U.S.
11 Marshal. The U.S. Marshal shall serve a copy of the Complaint and summons upon
12 Defendants as directed by Plaintiff on the U.S. Marshal Form 285.

13 DATED: December 10, 2015

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15 **WILLIAM Q. HAYES**
16 United States District Judge
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